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July 5, 1994

Mr. William F. Caton
Acting Secretary,
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

Via Messenger

Re: **CC Docket No. 92-115**
Revision of Part 22 of the Commission's Rules
Governing the Public Mobile Services

Dear Mr. Caton:

Submitted herewith on behalf of SMR Systems, Inc. are an original plus five (5) copies of its Further Reply Comments with respect to the above-referenced docket.

Kindly contact my office directly with any questions concerning this submission.

Respectfully submitted,

William J. Franklin
Attorney for SMR Systems, Inc.

Encs.
cc: SMR Systems, Inc.
Service List

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 of the Commission's rules governing the Public Mobile Services	)	**CC Docket No. 92-115**

To: The Commission

FURTHER REPLY COMMENTS OF
SMR SYSTEMS INC.

SMR Systems, Inc. ("SSI"), by its attorney and pursuant to Section 1.415(c) of the Commission's Rules, hereby replies to other Comments with respect to the Further Notice of Proposed Rulemaking adopted in the above-captioned proceeding.[1/] These reply comments are restricted to the Commission's proposed revision of the rules applicable to the 931 MHz paging service.

SSI's Comments discussed two proposals made in the FNPRM. First, SSI (Comments at 2-3) supported the Commission's proposal to break the 931 MHz licensing bottleneck by requiring all pending and future 931 MHz applications to request a specific frequency.[2/] Second, SSI (Comments at 4-7) suggested necessary revisions to the Commission's proposed definitions of "major amendment" and "modification to authorization." These Reply

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[1/] Revision of Part 22, 9 FCC Rcd _____ (FCC 94-102, released May 20, 1994) (Further Notice of Proposed Rulemaking) ("FNPRM").

[2/] SSI coupled that support, however, with a request that the Commission provide better information as to the availability of 931 Mhz paging channels.

Comments will discuss the other Comments filed with respect to these issues.

I. THE COMMISSION NEED NOT ACCEPT ADDITIONAL APPLICATIONS AS A RESULT OF ITS PROPOSED REQUIREMENT THAT PENDING 931 MHz APPLICATIONS BE AMENDED TO REQUEST A SPECIFIC FREQUENCY.

Paragraph 17 of the FNPRM suggests that the Commission implement its proposal to covert the pending 931 MHz paging applications from generic to specific frequencies in three steps. In step 1, applicants would have 60 days following the adoption of the rules to amend their applications to request a specific frequency. In step 2, interested parties would have 30 days from the date of public notice of the frequency-specification amendments to file Section 309 petitions against the amended applications. Finally, in step 3, virtually any U.S. citizen would have 60 days from the date of public notice to file mutually exclusive applications.

SSI respectfully suggests that the Commission's proposed step 1 (frequency-specification) is essential for pending applications,[3/] that proposed step 2 (petitions to deny) must be substantially limited, and that step 3 (mutually exclusive filings) is a giant step backward and must be deleted.

[3/] SSI agrees with the commenting parties who suggest that application of these procedures to previously granted applications subject to pending petitions for reconsideration is unnecessary and would not serve the public interest. See Comments of Alpha Express, Inc. at 5-12; Comments of Tri-State Radio, Inc. at 9-23. The grant of an application necessarily requires that all the parties to its processing group have either been assigned frequencies or had their applications dismissed.

The Commission should note that the frequency-specification amendments are all minor amendments and thus do not give interested parties the rights either to file petitions to deny or mutually exclusive applications. Specifically, existing Section 22.501(p)(2)(i) clearly states that -- as a matter of law -- all pending 931 MHz non-network applications are requesting any available 931 MHz paging channel. Accordingly, the amendment of these applications to identify a specific frequency is merely deleting the applicant's request for all the other channels and does not add or expand a technical proposal. Thus, Section 22.23(c)(1) would deem this amendment to be minor.

Several commenting parties expressed substantial concerns regarding steps 2 and 3 of the Commission's proposal, e.g., the petition-to-deny and mutually-exclusive application steps.[4/] By eliminating steps 2 and 3, the procedures described herein provide the benefits of the Commission's proposal without the disadvantages cited by the commenting parties.

Accordingly, the Commission should require applicants (within 60 days following the adoption of the rules) to amend their applications to request a specific frequency, and then process the amendment applications under the traditional definitions of mutual exclusivity, i.e., all applications requesting the same specific frequency within 70 miles of at least one other

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[4/] See e.g., Comments of the Personal Communications Industry Association ("PCIA") at 5-6; Comments of Paging Partners Corporation ("PPC") at 2-4.

and originally filed within 60 days of each other become a distinct processing group for further licensing purposes.

The Commission should recognize that the licensing bottleneck arose because its 931 MHz processing groups became so large and ill-defined that no two applicants or engineers could agree on any group's proper membership. The Commission should learn from this problem, and amend its 931 MHz rules to define small processing groups clearly and unambiguously. As the Commission's 931 MHz experience demonstrates, too much due process becomes "undue" process, and does not serve the public interest.

II. THE COMMENTING PARTIES GENERALLY AGREE WITH SSI'S POSITION THAT THE COMMISSION'S PROPOSED DEFINITION OF "MODIFICATION" IS FAR TOO NARROW.

Virtually all parties agreed with SSI's fundamental position that the Commission's proposed definition of "modification to authorization" (FNPRM, ¶18) is far too narrow.[5/] SSI's detailed

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[5/] See, e.g., PPC at 5-6 (20-mile limit proposed); Comments of Priority Communications, Inc. at 3-6 (40-mile limit proposed); Comments of Paging Network, Inc. at 15-16 (Commission's proposal has no rational basis); Comments of ProNet, Inc. at 6-9 (modification exception needed for interior sites of wide-area system); Comments of Ameritech Mobile Services, Inc. at 7-9 (20-mile limit proposed); Comments of Comp Comm, Inc. at 5-6 (26-kilometer/16.2-mile limit proposed); Comments of Skytel Corporation at 12-15 (existing 40-mile limit should be retained).

Indeed, Airtouch Paging was the only dissenting party to SSI's position, and even Airtouch agreed with SSI (Airtouch Paging Comments at 16 & n.42) that the Commission needs an exception to the modification-definition for lost transmitter sites. However, Airtouch Paging's overall position failed to consider either the Commission's existing practices or the realities of multi-site, wide-area paging systems. Accordingly, the Commission should instead adopt the overwhelming majority position here.

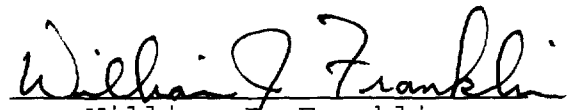
comments discussed the Commission's existing, time-tested modification policies in the context of today's regulatory environment. Thus, while the specifics might need to refined to reflect other comments, the Commission should use SSI's detailed proposal as the basis for a realistic definition of "modification to authorization."

CONCLUSION

Accordingly, SMR Systems Inc. respectfully requests that the Commission adopt its proposed revisions to Part 22 for 931 MHz licensing with the rule changes suggested herein and in SSI's Comments.

Respectfully submitted,

SMR SYSTEMS INC.

By: 
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